



so since February 19, 2006.<sup>1</sup> Petitioner has not filed a direct appeal or a personal restraint petition challenging fact or structure of his sentence.

On June 26, 2006, petitioner filed a 28 U.S.C. § 2254 petition for writ of habeas corpus with this Court. Dkt. No. 1. The Court declined to serve the petition because it failed to name a proper respondent. Dkt. No. 3. Petitioner later amended the petition, twice, and the Court directed service. Dkt. Nos. 4-6.<sup>2</sup> On September 15, 2006, respondent filed an answer (Dkt. No. 11), which was replied to by petitioner on September 29, 2006 (Dkt. No. 12). Petitioner's second amended petition and the full record in this case are now before the Court. Dkt. Nos. 6, 1.

### III. CLAIMS FOR RELIEF

Petitioner raises four claims for relief in his petition: (1) lack of *in personam* jurisdiction; (2) lack of subject-matter jurisdiction; (3) "Violation of State & Federal Constitution to proceed pro se"; and (4) violation of his confrontation rights as guaranteed by the Sixth Amendment of the U.S. Constitution and Article I, § 22 of the Washington State Constitution. In his answer, respondent argues that petitioner has failed to exhaust his claims in state court. Dkt. No. 11.

### IV. DISCUSSION

In order for a federal district court to review the merits of a § 2254 petition for writ of habeas corpus, the petitioner must first exhaust his state court remedies. 28 U.S.C. § 2254(b)(1)(A); *Fields v. Waddington*, 401 F.3d 1018, 1020 (9th Cir. 2005); *see also* *Sherwood v. Tomkins*, 716 F.2d 632, 634 (9th Cir. 1983) ("[A] would-be habeas corpus

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<sup>1</sup> It appears that counsel for respondent has been unable to obtain a copy of petitioner's judgment and sentence, due to the recency of that entry. *See* Dkt. No. 11, at 1. Petitioner does not dispute that it exists.

<sup>2</sup> Petitioner's second amended complaint provides no substantive claims. Instead, it corrects the deficiency in the previous petitions by naming a proper respondent and refers to the initial petition as the source of the relevant substantive claims. *See* Dkt. No. 6.

petitioner must await the outcome of his [state court] appeal before his state remedies are exhausted.”). A habeas petitioner must present his federal claims to state court in order to give the state the opportunity to pass upon and correct violations of its prisoners’ federal rights. The exhaustion requirement is satisfied when the petitioner either (1) fairly and fully presents each of his federal claims to the state’s highest court, or (2) demonstrates that no state remedies are available to him. *Johnson v. Zenon*, 88 F.3d 828, 829 (9th Cir. 1996). A petitioner fairly and fully presents a claim if he submits it “(1) to the proper forum, (2) through the proper vehicle, and by providing the proper factual and legal basis for the claim.” *Insyxiengmay v. Morgan*, 403 F.3d 657, 668 (9th Cir. 2005) (emphasis added) (internal citations omitted); *see also Gray v. Netherland*, 518 U.S. 152, 162-63 (1996) (indicating that exhaustion requires petitioners to make “reference to a specific federal constitutional guarantee, as well as a statement of the facts that entitle the petitioner to relief”).

Here, petitioner has failed to demonstrate that he has fairly and fully exhausted his federal claims in state court. The Court finds no indication from the record evincing petitioner’s attempt to appeal his 2006 judgment and sentence. Indeed, petitioner’s first, amended, and second amended petitions clearly state he did not appeal it. *See* Dkt. Nos. 1, 4, 6.<sup>3</sup> Unexhausted claims are not cognizable in a federal habeas corpus action. *Fields v.* 401 F.3d at 1020. Before presenting his claims for relief to this Court, petitioner must first give Washington courts the opportunity to rule on them.

Petitioner is additionally reminded that the Ninth Circuit requires that a habeas petitioner explicitly identify the federal basis of his claims either by identifying specific portions of the federal Constitution or statutes, or by citing federal or state case law that analyzes the federal Constitution. *Insyxiengmay*, 403 F.3d at 668. This is to ensure that state courts are adequately alerted to the fact that petitioner is raising federal constitutional claims. *Hiivala v.*

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<sup>3</sup> It appears that petitioner’s reply also concedes this fact. *See* Dkt. No. 12 at 2.


01 *Wood*, 195 F.3d 1098, 1106 (9th Cir. 1999). Alluding to broad constitutional principles and  
02 “human rights,” without more, does not satisfy the exhaustion requirement. *Id.* Although *pro*  
03 *se habeas* petitioners may be entitled to more leniency than petitioners with counsel, *Sanders v.*  
04 *Ryder*, 342 F.3d 991, 999 (9th Cir. 2003), petitioners ordinarily do not satisfy the exhaustion  
05 requirement if the state court must read beyond their motion in order to be alerted to their  
06 claims. *Baldwin v. Reese*, 541 U.S. 27, 32 (2004).

07 Under any analysis, petitioner’s current § 2254 petition is unexhausted and should be  
08 dismissed.

09 V. CONCLUSION

10 Because petitioner has failed to properly exhaust his federal claims in state court, the  
11 Court recommends that his 28 U.S.C. § 2254 petition be DISMISSED without prejudice. A  
12 proposed order accompanies this Report and Recommendation.

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14 DATED this 24th day of October, 2006.

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17 JAMES P. DONOHUE  
18 United States Magistrate Judge  
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